

AMENDED IN SENATE MARCH 3, 2010

AMENDED IN SENATE FEBRUARY 19, 2010

CALIFORNIA LEGISLATURE—2009–10 EIGHTH EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 6

Introduced by Committee on Budget

January 15, 2010

~~An act to add Section 41204.2 to the Education Code, to amend Section 16965 of, and to add Chapter 2 (commencing with Section 55830) to Part 3 of Division 2 of Title 5 of, the Government Code, to amend Sections 99312 and 99315 of the Public Utilities Code, to amend Sections 7360, 23663, and 60050 of, to add Sections 6051.8, 6201.8, 6357.7, 7102.1, 7361.1, 7653.1, 17276.12, and 24416.12 to, and to repeal Section 7103 of, the Revenue and Taxation Code, and to amend Sections 183.1 and 2103 of the Streets and Highways Code, relating to transportation finance, and making an appropriation therefor. An act to add Section 41204.2 to the Education Code, and to amend Sections 7360 and 60050 of, and to add Sections 6051.8, 6201.8, 6357.7, 7361.1, and 7653.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 6, as amended, Committee on Budget. ~~Transportation finance. Sales and use taxes: motor vehicle fuel tax: diesel fuel tax.~~

(1) Existing law requires the Director of Finance to make certain adjustments in one of the formulas used in computing the state's obligation under the California Constitution to provide funding for school districts and community college districts so as to ensure that the modifications in property tax revenue allocation requirements that were

made by prior enactments do not have a net fiscal impact on school districts or community college districts, or upon the state's funding obligation to those districts.

This bill would additionally specify adjustments on the calculation of the state's constitutional funding obligations that are related to the change in taxes made by this bill.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Tangible personal property includes motor vehicle fuel, commonly referred to as gasoline, and including aviation gasoline. Existing law, pursuant to Article XIX B of the California Constitution, requires a portion of the revenues from the sales and use tax on the sale of, and the storage, use or other consumption of, motor vehicle fuel to be deposited in the Transportation Investment Fund to be used for specified highway, local street and road, and mass transportation purposes.

This bill would, on and after July 1, 2010, exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption in this state of, motor vehicle fuel, thereby eliminating funding from this revenue source for those transportation programs. This exemption would not apply to local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes; imposed in accordance with the Transactions and Use Tax Law, and specified state sales and use taxes.

This bill, on or after July 1, 2011, would impose an additional 1.75% tax on the sale of, and the storage, use, and other consumption in this state of, diesel fuel ~~with revenues from those taxes transferred to the Public Transportation Account.~~

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law each impose a tax at the rate of \$0.18 per gallon on the removal, entry, sale, delivery, or specified use of motor vehicle fuel, commonly referred to as gasoline, and including aviation gasoline, and diesel fuel, and also imposes a tax at the rate of \$0.02 per gallon of aircraft jet fuel sold to a fuel user or used by a dealer. Article XIX of the California Constitution requires state-imposed excise tax revenues from fuel used in motor vehicles upon public streets and highways to be used solely for highway and mass transit guideway purposes.

This bill would increase the rate of tax on motor vehicle fuel ~~from of~~ \$0.18 per gallon ~~to \$0.309 by an additional \$0.173 per gallon between~~ on and after July 1, 2010, ~~and July 1, 2011,~~ as specified. The bill would impose a floor stock tax equal to ~~\$0.129~~ \$0.173 per gallon for the privilege of storing motor vehicle fuel ~~and diesel fuel~~ on July 1, 2010. Beginning with the 2011–12 fiscal year, and each fiscal year thereafter, the bill would require the *State* Board of Equalization to annually ~~compute~~ *adjust* the motor vehicle fuel tax rate consistent with the requirement that the estimated revenues from ~~an the motor vehicle fuel tax~~ increase shall not exceed the estimated revenues ~~from attributable to the repealed exemption from sales and use tax on~~ for the sale of, or the storage, use, or other consumption of, motor vehicle fuel, as provided. ~~The new revenues would first be used to reimburse the General Fund for the amount needed for debt service on specified general obligation transportation bonds, with 30% of remaining revenues to be transferred to the State Highway Account to fund projects in the state transportation improvement program (STIP), 30% to be transferred to the State Highway Account for the State Highway Operation and Protection Program (SHOPP), and the remaining 40% to be apportioned to cities and counties for local street and road purposes pursuant to a specified formula, thereby resulting in an appropriation. However, in the 2010–11 fiscal year, 50% of the remaining revenues would be allocated to the STIP and 50% would be allocated to local streets and roads.~~

This bill would, on July 1, 2011, reduce the rate of tax on diesel fuel from \$0.18 per gallon to \$0.136 per gallon, subject to adjustment, as specified.

~~(4) Existing law, pursuant to Proposition 116 of 1990, creates the Public Transportation Account as a trust fund, with revenues in the account to be used solely for mass transportation and transportation planning purposes, and requires revenues from specified portions of the state sales and use tax on the sale of, and the storage, use or other consumption of, motor vehicle fuel and diesel fuel to be transferred to the account. Existing law also requires revenues deposited in the State Highway Account from various miscellaneous sources that are not subject to Article XIX of the California Constitution to be transferred to the Public Transportation Account.~~

~~This bill, pursuant to the exemptions described in (2) above, would eliminate the sales and use tax revenues from the sale of, and the storage, use or other consumption of, motor vehicle fuel which are currently~~

deposited in the Public Transportation Account, thereby eliminating funding from this source for the account. This bill would also eliminate the transfer of miscellaneous revenues from the State Highway Account to the Public Transportation Account in the 2010–11 fiscal year, and would instead transfer those revenues to the Transportation Debt Service Fund for reimbursement of the General Fund for payment of debt service for specified general obligation rail and transit bonds. This bill would require the Controller to retransfer to the State Highway Account \$78,903,000 from the Public Transportation Account that was transferred to that account in the 2009–10 fiscal year from the miscellaneous revenues in the State Highway Account, and to transfer those revenues from the State Highway Account to the Transportation Debt Service Fund for reimbursement for debt service on specified general obligation rail and transit bonds. This bill would also reduce the amount to be transferred during the 2009–10 fiscal year from the Public Transportation Account to the Transportation Debt Service Fund for reimbursement of the General Fund for specified general obligation rail and transit bonds from \$225,044,000 to \$142,058,000. This bill, in the 2010–11 fiscal year, would transfer \$254,222,000 from the Public Transportation Account to the Transportation Debt Service Fund for reimbursement of the General Fund for payment of debt service for specified general obligation rail and transit bonds.

(5) Existing law specifies the authorized expenditures from the Public Transportation Account. Existing law creates the State Transit Assistance Program as one of the eligible transit programs to be funded with 50% of specified revenues in the account. The program provides grants to eligible local agencies under 2 different formulas. Existing law, however, suspends the program for the 2009–10 to 2012–13 fiscal years, inclusive. The remaining funds in the account are allocated to state-level mass transportation and transportation planning programs.

This bill would lift the suspension of the State Transit Assistance Program and appropriate \$400,000,000 from the Public Transportation Account for the program in the 2009–10 fiscal year under the applicable formulas. The bill would provide for no further funding of the State Transit Assistance Program in the 2010–11 fiscal year. For 2010–11 and subsequent fiscal years, the bill would continuously appropriate $\frac{3}{4}$ of specified revenues in the Public Transportation Account under the applicable formulas to the State Transit Assistance Program.

(6) Existing law requires certain motor vehicle fuel sales tax revenues commonly known as the “spillover” that would otherwise be deposited

in the Public Transportation Account to instead be deposited in the Mass Transportation Fund, for expenditure on various programs and for transfer to the Transportation Debt Service Fund.

This bill would repeal the provisions governing the expenditures from the Mass Transportation Fund.

(7) Existing law requires certain transportation planning activities by regional transportation planning agencies designated by the Director of Transportation, including development of a regional transportation plan. Certain of these agencies are designated under federal law as metropolitan planning organizations.

This bill would authorize a metropolitan planning organization, subject to voter approval, to impose a light-duty vehicle mitigation fee in all or part of the region within its jurisdiction. The fee would be imposed on purchasers of motor vehicle fuel for use in cars and light trucks and would be collected from those purchasers by the retailer, and would define motor vehicle fuel for these purposes to include gasoline and diesel.

The bill would provide for the fee to be imposed by the metropolitan planning organization, with fee revenues to be used for transit, bicycle, and pedestrian programs that have been identified in the regional transportation plan. The bill would require a finding by the metropolitan planning organization that the programs cost effectively mitigate or avoid pollution from criteria air pollutants and greenhouse gas emissions directly associated with the operation of cars and light trucks, that the programs are consistent with a sustainable communities or alternative planning strategy adopted in conjunction with the regional transportation plan that would achieve the greenhouse gas emissions reduction targets adopted by the State Air Resources Board, and that there is a nexus between the payers of the fee and the mitigation or avoidance, as funded by the fee, of pollution from criteria air pollutants and greenhouse gas emissions. The bill would require the board of supervisors of each county in the jurisdiction of the metropolitan planning organization where the fee is to be imposed, upon request of the organization, to submit a ballot measure to the voters. The ballot measure would require approval of a majority of the voters of the affected county. The bill would require the metropolitan planning organization to contract with the State Board of Equalization for administration of the fee pursuant to the Fee Collections Procedures Law, a violation of which is a crime, thereby imposing a state-mandated local program. In certain counties,

~~the county transportation commission rather than the metropolitan planning organization, would impose the fee under these provisions.~~

~~(8) The Personal Income Tax Law and the Corporation Tax Law allow individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities. Those laws disallow the deduction for net operating losses and net operating loss carryovers in the 2008 and 2009 taxable years. Those laws extend the carryover period for those net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as they would have if the change had not been enacted. Those laws, for net operating losses incurred in taxable years beginning on or after January 1, 2010, extend the carryover period to 20 years.~~

~~This bill would limit the allowable deductions for net operating losses to a maximum of 68% of the taxpayer's income, for taxable years beginning on or after January 1, 2010, and before January 1, 2011.~~

~~(9) The Corporation Tax Law, for taxable years beginning on or after January 1, 2008, allows a credit to be assigned to an eligible assignee, as defined, for use by that assignee in a taxable year beginning on or after January 1, 2010.~~

~~This bill would delay the use of the assigned credit by an eligible assignee to taxable years beginning on or after January 1, 2011.~~

~~(10) Existing law, the Clean Air and Transportation Improvement Act of 1990, authorizes the issuance of \$1.99 billion in general obligation bonds for rail and transit purposes. Existing law provides for the California Transportation Commission to allocate bond funds to eligible projects.~~

~~Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, authorizes the issuance of \$19.925 billion in general obligation bonds for various transportation purposes. Existing law designates an administrative agency that is responsible for programming these bond funds for the various categories of projects funded by the act. Existing law authorizes a regional or local agency that is a lead agency for a project to be funded under the act to apply to the administrative agency for a letter of no prejudice that permits the applicant to spend its own resources on the project and then to be reimbursed at a later date when bond funds become available, subject to various requirements and conditions.~~

~~This bill would enact similar provisions applicable to regional or local agencies relative to projects to be funded by the Clean Air and Transportation Improvement Act of 1990.~~

~~(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

~~(12)~~

~~(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.~~

~~This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.~~

~~(5) This bill would take effect immediately as a tax levy.~~

~~Vote: majority. Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 41204.2 is added to the Education Code,
2 to read:
3 41204.2. The Director of Finance shall adjust “the percentage
4 of General Fund revenues appropriated for school districts and
5 community college districts, respectively, in fiscal year 1986–87”
6 for purposes of applying paragraph (1) of subdivision (b) of Section
7 8 of Article XVI of the California Constitution in a manner that
8 ensures that the shift in general fund revenues pursuant to Sections
9 6051.8, 6201.8, 6357.7, and 7361.1, subdivision (b) of Section
10 7360, and subdivision (b) of Section 60050 of the Revenue and
11 Taxation Code, as those provisions were enacted in the 2009–10
12 Eighth Extraordinary Session, shall have no net fiscal impact upon
13 the amounts that are otherwise required to be applied by the state
14 for the support of school districts and community college districts
15 pursuant to Section 8 of Article XVI of the California Constitution.
16 SECTION 1. ~~(a) The functioning of the California economy~~
17 ~~depends on a fully operational and well-maintained transportation~~

1 system as well as its related infrastructure in order to provide for
2 the efficient movement of goods, travel of employees commuting
3 to their places of work, and connection of businesses to their
4 customers.

5 (b) The state and local governments within the state have
6 delayed for many years the maintenance and repair of streets and
7 highways such that the resulting condition of those streets and
8 highways affects both public safety and the efficient functioning
9 of the economy. A recent survey found that California ranks 47th
10 out of the 50 states in expenditures on street and highway
11 maintenance.

12 (c) The California economy is in a deep recession, with overall
13 unemployment in excess of 12 percent. Employment by public
14 transit agencies has shrunk significantly during this recession.
15 Maintaining the streets and highways in this state and providing
16 for the operation of California's transit systems will generate badly
17 needed jobs nearly as quickly as the funds can be disbursed.

18 SEC. 2. Section 41204.2 is added to the Education Code, to
19 read:

20 41204.2. (a) (1) Pursuant to paragraph (1) of subdivision (b)
21 of Section 41204, the Director of Finance shall adjust "the
22 percentage of General Fund revenues appropriated for school
23 districts and community college districts, respectively, in fiscal
24 year 1986-87" for purposes of applying paragraph (1) of
25 subdivision (b) of Section 8 of Article XVI of the California
26 Constitution, to reflect the allocation of certain tax revenues to the
27 General Fund and to special funds required by the qualifying
28 provisions in a manner that ensures that changes in those
29 allocations will have no net fiscal impact upon the amounts that
30 are otherwise required to be applied by the state for the support of
31 school districts and community college districts pursuant to Section
32 8 of Article XVI of the California Constitution.

33 (2) For purposes of this section, "qualifying provisions," means
34 Sections 6357.7, 6051.8, 6201.8, and 7361.1, subdivision (b) of
35 Section 7360, and subdivision (b) of Section 60050 of the Revenue
36 and Taxation Code, as those provisions were enacted in the
37 2009-10 Eighth Extraordinary Session.

38 (b) Notwithstanding any other provision of law, for the 2010-11
39 fiscal year and each fiscal year thereafter, "the percentage of
40 General Fund revenues appropriated for school districts and

community college districts, respectively, in fiscal year 1986–87,” for purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, shall be deemed to be the percentage of General Fund revenues that would have been appropriated for those entities if the qualifying provisions had been operative for the 1986–87 fiscal year.

(e) Pursuant to paragraph (1) of subdivision (b) of Section 41204, it is the intent of the Legislature in enacting the act adding this section to ensure both of the following:

(1) That the changes required by the qualifying provisions in the allocation of certain tax revenues to the General Fund and to special funds do not have a net fiscal impact upon school districts, as defined in Section 41302.5, or community college districts.

(2) That the changes required by the qualifying provisions in the allocation of certain tax revenues to the General Fund and to special funds do not have a net fiscal impact upon the amounts of revenue otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 3. Section 16965 of the Government Code is amended to read:

16965. (a) The Transportation Debt Service Fund is hereby created in the State Treasury. Moneys in the fund shall, among other things, as provided in this section, be dedicated to payment of debt service on bonds including bonds issued pursuant to the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing with Section 99600) of Division 10 of the Public Utilities Code), the Passenger Rail and Clean Air Bond Act of 1990 (Chapter 17 (commencing with Section 2701) of Division 3 of the Streets and Highways Code), the Seismic Retrofit Bond Act of 1996 (Chapter 12.48 (commencing with Section 8879) of Division 1 of Title 2), the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2), and the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code). If the moneys in the fund are insufficient to pay the balance of the debt consistent with existing obligations, the General Fund will be used to pay the balance of any debt service.

~~(b) (1) From moneys transferred to the fund pursuant to subdivision (b) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund for up to three hundred thirty-nine million two hundred eighty-nine thousand three hundred forty-five dollars (\$339,289,345) for the purpose of offsetting the cost of debt service payments made from the General Fund during the 2007-08 fiscal year for public transportation-related general obligation bond expenditures in the following amounts:~~

~~(A) Clean Air and Transportation Improvement Act of 1990, one hundred twenty-three million nine hundred seventy-three thousand four hundred ninety-three dollars (\$123,973,493).~~

~~(B) Passenger Rail and Clean Air Bond Act of 1990, seventy million nine hundred eighty-three thousand three hundred sixty-three dollars (\$70,983,363).~~

~~(C) Seismic Retrofit Bond Act of 1996, one hundred forty-four million three hundred thirty-two thousand four hundred eighty-nine dollars (\$144,332,489).~~

~~(2) From moneys transferred to the fund pursuant to subdivision (b) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund in the 2007-08 fiscal year for two hundred million dollars (\$200,000,000) for the purpose of offsetting the cost of debt service payments made in prior fiscal years from the General Fund for public transportation-related general obligation bond expenditures.~~

~~(c) From moneys transferred to the fund pursuant to subdivisions (e) and (d) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund any amount necessary to offset the cost of debt service payments made from the General Fund during any fiscal year for transportation-related general obligation bond expenditures.~~

~~(d) From moneys transferred to the fund pursuant to an annual Budget Act or other statute from the State Highway Account in the State Transportation Fund, the Director of Finance is hereby authorized to reimburse the General Fund any amount necessary to offset the cost of debt service payments made from the General Fund during any fiscal year for transportation-related general obligation bond expenditures consistent with Article XIX of the California Constitution.~~

1 ~~(e) From moneys transferred to the fund pursuant to Section~~
2 ~~2103 of the Streets and Highways Code, the Director of Finance~~
3 ~~is hereby authorized to reimburse the General Fund any amount~~
4 ~~necessary to offset the cost of debt service payments made from~~
5 ~~the General Fund on any bonds issued pursuant to Proposition 192~~
6 ~~(1996) and three-quarters of the amount of debt service payments~~
7 ~~made from the General Fund on any bonds issued pursuant to~~
8 ~~Proposition 1B (2006):~~

9 ~~(f) From moneys transferred to the fund pursuant to Section~~
10 ~~183.1 of the Streets and Highways Code, the Director of Finance~~
11 ~~is hereby authorized to reimburse the General Fund any amount~~
12 ~~necessary to offset the cost of debt service payments made from~~
13 ~~the General Fund on any bonds issued pursuant to Proposition 116~~
14 ~~(1990):~~

15 ~~(g) From moneys transferred to the fund pursuant to Section~~
16 ~~99315 of the Public Utilities Code, the Director of Finance is~~
17 ~~hereby authorized to reimburse the General Fund any amount~~
18 ~~necessary to offset the cost of debt service payments made from~~
19 ~~the General Fund on any bonds issued pursuant to Proposition 108~~
20 ~~(1990) and Proposition 1A (2008), and one-quarter of the amount~~
21 ~~of debt service payment made from the General Fund on any bonds~~
22 ~~issued pursuant to Proposition 1B (2006):~~

23 ~~SEC. 4. The Legislature finds and declares all of the following:~~

24 ~~(a) In 2008, the Legislature passed, and the Governor signed~~
25 ~~into law, Senate Bill 375 (Chapter 728, Statutes of 2008), pursuant~~
26 ~~to which the Legislature found that the emissions from cars and~~
27 ~~light trucks constitute 30 percent of greenhouse gas emissions from~~
28 ~~California. The Legislature also found, even taking into account~~
29 ~~emission reductions from new vehicle technology and increased~~
30 ~~use of low-carbon fuels, that California would be unable to achieve~~
31 ~~its climate goals without changed land use patterns and improved~~
32 ~~transportation:~~

33 ~~(b) Senate Bill 375 authorized the State Air Resources Board~~
34 ~~to set greenhouse gas emission reduction targets to be achieved~~
35 ~~by each region through changed land use patterns and improved~~
36 ~~transportation:~~

37 ~~(c) Senate Bill 375 also created a process for the regions to~~
38 ~~include in the regional transportation plan a sustainable~~
39 ~~communities strategy, including a distinct process for the Southern~~
40 ~~California Association of Governments region, that would show~~

1 a forecasted development pattern and integrated transportation
2 network to achieve, if there is a feasible way to do so, the
3 greenhouse gas emission targets set by the State Air Resources
4 Board. If there is not a feasible way to achieve the targets within
5 the sustainable communities strategy, the regions must prepare an
6 alternative planning strategy showing the most practicable choices
7 for achievement of the greenhouse gas emission reduction targets.

8 (d) In the sustainable communities strategy, or an alternative
9 planning strategy, if applicable, the regions will be able to identify
10 transportation programs and projects that would enable the regions
11 to mitigate the greenhouse gas emissions from cars and light trucks
12 in order to achieve the targets set by the State Air Resources Board.

13 (e) The State Air Resources Board has found that 70 percent of
14 air pollution is caused by the combustion of motor vehicle fuel.
15 Under federal law, each regional transportation plan must
16 demonstrate that it will conform to the requirements of the federal
17 Clean Air Act (42 U.S.C. Sec. 7401 et seq.). As part of the regional
18 transportation plan, the region may identify transportation programs
19 and projects that will mitigate or avoid pollution from criteria air
20 pollutants caused by motor vehicle fuels, and that would help
21 achieve conformity with the federal Clean Air Act. “Criteria air
22 pollutants” are air pollutants determined pursuant to Section 108
23 of the federal Clean Air Act (42 U.S.C. Sec. 7408).

24 (f) Funding for transit operations has been severely reduced.
25 Without adequate transit funding, the regions will not be able to
26 implement transit programs to mitigate the climate impacts and
27 air quality impacts caused by the consumption of motor vehicle
28 fuels in cars and light trucks.

29 (g) It is also appropriate to provide additional funding for
30 pedestrian and bicycle facilities. Improved and continuous
31 sidewalks remove barriers to transit use by facilitating safe walking
32 access to transit stops. Bicycles are an effective environmentally
33 sound transportation mode.

34 (h) It is the intent of Section 5 of this act to authorize
35 metropolitan planning organizations, or within the Southern
36 California Association of Governments region, a county
37 transportation commission, to establish a light-duty vehicle
38 mitigation fee within their jurisdictions on users of motor vehicle
39 fuels to fund transportation programs and projects that are found
40 by the regional transportation plan to mitigate pollution from

1 criteria air pollutants and greenhouse gas emissions caused by the
2 use of those fuels in cars and light trucks.

3 SEC. 5. Chapter 2 (commencing with Section 55830) is added
4 to Part 3 of Division 2 of Title 5 of the Government Code, to read:

5
6 CHAPTER 2. LIGHT-DUTY VEHICLE MITIGATION FEE
7

8 55830. (a) Subject to the approval of the voters pursuant to
9 subdivision (d), a metropolitan planning organization designated
10 pursuant to Section 134 of Title 23 of the United States Code may
11 impose a light-duty vehicle mitigation fee in all or part of its
12 jurisdiction pursuant to this section. The fee shall become operative
13 on the first day of the first calendar quarter commencing more than
14 90 days after voter approval.

15 (b) The fee shall be in addition to any other levies that the
16 metropolitan planning organization is authorized to impose. The
17 fee may be implemented for a period not to exceed 30 years on all
18 purchasers of motor vehicle fuels sold in all or part of the
19 jurisdiction of the metropolitan planning organization for use in a
20 car or light truck. The rate of the fee shall be established by the
21 metropolitan planning organization on a per gallon basis. As used
22 in this chapter, motor vehicle fuel includes, but is not limited to,
23 gasoline and diesel fuel which shall have the same meanings set
24 forth in Section 7316 and Section 60022, respectively, of the
25 Revenue and Taxation Code.

26 (c) (1) Revenues from the fee may be expended for transit,
27 bicycle, and pedestrian programs, including operation and
28 maintenance of transit services, that have been identified in the
29 regional transportation plan, provided that the metropolitan
30 planning organization has made a finding that the programs
31 cost-effectively mitigate and avoid pollution from criteria air
32 pollutants, determined pursuant to Section 108 of the federal Clean
33 Air Act (42 U.S.C. Sec. 7408), and greenhouse gas emissions
34 directly associated with the operation of cars and light trucks, that
35 the programs are consistent with a strategy adopted pursuant to
36 Section 65080 that would achieve the greenhouse gas emissions
37 reduction targets adopted by the State Air Resources Board, and
38 that there is a nexus between the payers of the fee and the
39 mitigation or avoidance of pollution from criteria air pollutants
40 and greenhouse gas emissions funded by the fee. A metropolitan

1 planning organization that includes a light-duty vehicle mitigation
2 fee in its regional transportation plan shall identify the transit,
3 bicycle, and pedestrian programs that would be funded by the fee
4 in the financial element of the regional transportation plan. The
5 financial element shall also identify the eligible transit operators
6 and other recipients and the amount of funds that would be needed
7 from all sources, including the light-duty vehicle mitigation fee,
8 for each year of the programs through the planning horizon of the
9 regional transportation plan.

10 (2) A fee authorized by this chapter shall include sufficient
11 funding, together with other funding sources realistically projected
12 to be available, to operate and maintain each program for the
13 duration of the fee.

14 (d) (1) Following the adoption by the metropolitan planning
15 organization of a regional transportation plan that provides for a
16 fee pursuant to this chapter, the board of supervisors of each county
17 and city and county in the jurisdiction of the metropolitan planning
18 organization where the fee is to be imposed shall, upon the request
19 of the metropolitan planning organization, submit to the voters at
20 a local election consolidated with a statewide primary or general
21 election specified by the metropolitan planning organization, a
22 measure, adopted by the organization, authorizing the organization
23 to impose the fee within all or part of the region consistent with
24 subdivision (e).

25 (2) The metropolitan planning organization shall reimburse each
26 county or city and county in the affected part of the region for the
27 cost of submitting the measure to the voters. These costs shall be
28 reimbursed from revenues derived from the fee if the measure is
29 approved by the voters or, if the measure is not approved, from
30 any funds of the metropolitan planning organization that are
31 available for general transportation planning.

32 (e) (1) Upon approval of the measure by a majority of the voters
33 voting at an election within that part of the region where the fee
34 is to be imposed, the metropolitan planning organization may
35 impose the fee. The fee shall be imposed on the purchaser of motor
36 vehicle fuel in a car or light truck at the point of retail sale in each
37 county or city and county within the region where the fee is
38 imposed, and shall be collected from the purchaser by the retailer
39 and transmitted to the State Board of Equalization. The ordinance

1 shall provide for refund, by the board, of fees paid for motor
2 vehicle fuel that is not used in a car or light truck.

3 (2) The fee required to be collected by the retailer and any
4 amount unreturned to the customer which is not the fee but was
5 collected from the customer under the representation that it was
6 the fee constitutes debts owed by the retailer to the state.

7 (3) The fees imposed by this chapter are due and payable
8 quarterly on or before the last day of the month next succeeding
9 each calendar quarter. The payment shall be accompanied by a
10 return in the form prescribed by the State Board of Equalization.

11 (f) (1) The metropolitan planning organization shall contract
12 with the State Board of Equalization for the administration of the
13 fee imposed under paragraph (1) of subdivision (a), and the board
14 shall be reimbursed for its actual cost in the administration of the
15 fee, including administration of refunds, and for its actual cost of
16 preparation to administer the fee based upon an independent audit.

17 (2) The State Board of Equalization shall collect the fees
18 pursuant to the Fee Collection Procedure Law (Part 30
19 (commencing with Section 55001) of Division 2 of the Revenue
20 and Taxation Code).

21 (3) After deducting its cost of administering the fee, the State
22 Board of Equalization shall periodically transmit the net revenues,
23 less refunds, to the metropolitan planning organization as promptly
24 as possible. Transmittal of those revenues shall be made at least
25 twice in each calendar quarter.

26 (g) The net revenues of the fee shall be deposited into the
27 Light-Duty Vehicle Mitigation Fund, to be created and
28 administered by the metropolitan planning organization, and shall
29 be expended in accordance with this chapter. The metropolitan
30 planning organization shall promptly transmit the funds to each
31 eligible recipient pursuant to the regional transportation plan.

32 (h) The metropolitan planning organization may issue bonds
33 backed solely by revenues from the fee authorized by this chapter.
34 Revenues from the fee may be pledged for payment of debt service
35 on those bonds.

36 (i) Notwithstanding any other provision of this section, in the
37 region served by the multicounty transportation planning agency
38 described in Section 130004 of the Public Utilities Code, a county
39 transportation commission may impose the fee within the region
40 of its jurisdiction if it finds that the transit, bicycle and pedestrian

1 programs, including operation and maintenance of transit services;
2 that have been identified in the regional transportation plan, cost
3 effectively mitigate and avoid pollution from criteria air pollutants;
4 determined pursuant to Section 108 of the federal Clean Air Act
5 (42 U.S.C. Sec. 7408), and greenhouse gas emissions directly
6 associated with the operation of cars and light trucks, that the
7 programs are consistent with a strategy adopted by the metropolitan
8 planning organization that would achieve the greenhouse gas
9 emission reduction targets adopted by the State Air Resources
10 Board, and that there is a nexus between the payers of the fee and
11 the mitigation or avoidance of pollution from criteria air pollutants
12 and greenhouse emissions funded by the fee. In this case, the
13 county transportation commission, rather than the metropolitan
14 planning organization, shall exercise all of the powers under this
15 section relative to imposition of the fee.

16 (j) The requirement for voter approval pursuant to subdivision
17 (d) is not a requirement of the California Constitution.

18 SEC. 6. Section 99312 of the Public Utilities Code is amended
19 to read:

20 99312. Except as provided in Sections 99311 and 99311.5, and
21 except as otherwise provided in subdivisions (d) and (e), the funds
22 in the account shall be made available for the following purposes:

23 (a) Twenty-five percent for purposes of Section 99315, subject
24 to appropriation by the Legislature.

25 (b) To the Controller, 37.5 percent for allocation to
26 transportation planning agencies, county transportation
27 commissions, and the San Diego Metropolitan Transit Development
28 Board pursuant to Section 99314. Commencing with the 2011–12
29 fiscal year, these funds are hereby continuously appropriated for
30 purposes of this subdivision.

31 (c) To the Controller, 37.5 percent for allocation to
32 transportation agencies, county transportation commissions, and
33 the San Diego Metropolitan Transit Development Board for
34 purposes of Section 99313. Commencing with the 2011–12 fiscal
35 year, these funds are hereby continuously appropriated for purposes
36 of this subdivision.

37 (d) (1) For the 2009–10 fiscal year, notwithstanding any other
38 provision of this section or any other provision of law, the sum of
39 four hundred million dollars (\$400,000,000) is hereby appropriated
40 from the account to the Controller for immediate allocation

1 pursuant to paragraph (2). These funds are intended to cover the
2 two-year period of the 2009–10 and 2010–11 fiscal years. The
3 remaining funds in the account subject to this section shall be
4 available for the purposes of Section 99315, subject to
5 appropriation by the Legislature.

6 (2) (A) Fifty percent of the amount appropriated to the
7 Controller pursuant to paragraph (1) shall be allocated to
8 transportation planning agencies, county transportation
9 commissions, and the San Diego Metropolitan Transit Development
10 Board pursuant to Section 99314.

11 (B) Fifty percent of the amount appropriated to the Controller
12 pursuant to paragraph (1) shall be allocated to transportation
13 planning agencies, county transportation commissions, and the
14 San Diego Metropolitan Transit Development Board pursuant to
15 Section 99313.

16 (e) For the 2010–11 fiscal year, notwithstanding any other
17 provision of this section or any other provision of law, the funds
18 in the account subject to this section shall be made available only
19 for purposes of Section 99315, subject to appropriation by the
20 Legislature.

21 SEC. 7. Section 99315 of the Public Utilities Code is amended
22 to read:

23 99315. Funds made available pursuant to subdivision (a) of
24 Section 99312 shall be available for all of the following purposes:

25 (a) To the department for bus and passenger rail services
26 pursuant to Sections 14035, 14035.5, and 14038 of the Government
27 Code.

28 (b) To the department for funding of public transit capital
29 improvement projects in the state transportation improvement
30 program, pursuant to Section 14529 of the Government Code.

31 (c) To the department for its planning activities not payable
32 from the State Highway Account in the State Transportation Fund;
33 its mass transportation responsibilities, and its assistance in regional
34 transportation planning.

35 (d) To the department for allocation by the director to the
36 Institute of Transportation Studies of the University of California
37 for training and research in public transportation systems
38 engineering and management and coordination with other
39 transportation modes.

~~(e) To the commission for its activities not payable from the State Highway Account.~~

~~(f) To the Public Utilities Commission for its passenger rail safety responsibilities specified in statute on commuter rail, intercity rail, and urban rail transit lines.~~

~~(g) For transfer to the Transportation Debt Service Fund created by Section 16965 of the Government Code to reimburse the General Fund for current debt service payments on rail and transit-related general obligation bonds other than those issued pursuant to the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing with Section 99600)), as follows:~~

~~(1) For the 2009–10 fiscal year, the Controller shall transfer up to one hundred forty-two million fifty-eight thousand dollars (\$142,058,000) to the fund upon order of the Director of Finance.~~

~~(2) For the 2010–11 fiscal year, the Controller shall transfer up to two hundred fifty-four million two hundred twenty-two thousand dollars (\$254,222,000) to the fund, as follows:~~

~~(A) By the 15th of every month, the Treasurer, in consultation with the Director of Finance, shall notify the Controller of the amount of debt service that will be paid on each transportation bond during that month.~~

~~(B) Within two business days following the 28th of every month, the Controller shall transfer from the account to the Transportation Debt Service Fund an amount equal to monthly debt service paid by the General Fund on any bonds issued pursuant to Proposition 108 (1990) and Proposition 1A (2008), and one-quarter of the monthly debt service paid by the General Fund on any bonds issued pursuant to Proposition 1B (2006).~~

~~SEC. 8.~~

~~SEC. 2. Section 6051.8 is added to the Revenue and Taxation Code, to read:~~

~~6051.8. (a) In addition to the taxes imposed by this part, for the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1.75 percent of the gross receipts of any retailer from the sale of all diesel fuel, as defined in Section 60022, sold at retail in this state on and after the operative date of this subdivision.~~

~~(b) Subdivision (a) shall become operative on July 1, 2011.~~

~~SEC. 9.~~

SEC. 3. Section 6201.8 is added to the Revenue and Taxation Code, to read:

6201.8. (a) In addition to the taxes imposed by this part, an excise tax is hereby imposed on the storage, use, or other consumption in the state of diesel fuel, as defined in Section 60022, at the rate of 1.75 percent of the sales price of the diesel fuel on and after the operative date of this subdivision.

(b) Subdivision (a) shall become operative on July 1, 2011.

~~SEC. 10.~~

SEC. 4. Section 6357.7 is added to the Revenue and Taxation Code, to read:

6357.7. (a) On and after July 1, 2010, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, motor vehicle fuel, as defined in Section 7326.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) *On and after July 1, 2010, the State Board of Equalization and the Department of Finance shall recognize that the state no longer receives state sales and use tax revenues from the sale of, and the storage, use, or other consumption of, motor vehicle fuel for purposes of any estimates required to be performed under paragraphs (1) and (2) of subdivision (a) of Section 7102, and Section 7104.2.*

~~SEC. 11.~~ Section 7102.1 is added to the Revenue and Taxation Code, to read:

~~7102.1. Notwithstanding subdivision (b) of Section 7102, the revenues, less refunds, derived from the tax in Sections 6051.8 and 6201.8 shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be~~

1 transferred quarterly to the Public Transportation Account in the
2 State Transportation Fund.

3 ~~SEC. 12.~~ Section 7103 of the Revenue and Taxation Code is
4 repealed.

5 ~~SEC. 13.~~

6 ~~SEC. 5.~~ Section 7360 of the Revenue and Taxation Code is
7 amended to read:

8 7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed
9 upon each gallon of fuel subject to the tax in Sections 7362, 7363,
10 and 7364.

11 (2) *If the federal fuel tax is reduced below the rate of nine cents*
12 *(\$0.09) per gallon and federal financial allocations to this state*
13 *for highway and exclusive public mass transit guideway purposes*
14 *are reduced or eliminated correspondingly, the tax rate imposed*
15 *by paragraph (1), on and after the date of the reduction, shall be*
16 *recalculated by an amount so that the combined state rate under*
17 *paragraph (1) and the federal tax rate per gallon equal*
18 *twenty-seven cents (\$0.27).*

19 (3) *If any person or entity is exempt or partially exempt from*
20 *the federal fuel tax at the time of a reduction, the person or entity*
21 *shall continue to be so exempt under this section.*

22 (b) (1) On and after July 1, 2010, in addition to the tax imposed
23 by subdivision (a), a tax is hereby imposed upon each gallon of
24 fuel subject to the tax in Sections 7362, 7363, and 7364 in an
25 amount equal to ~~12 ¹/₁₀ cents (\$0.129)~~ 17 ³/₁₀ cents (\$0.173) per
26 gallon.

27 (2) For the 2011–12 fiscal year and each fiscal year thereafter,
28 the board shall, on or before March 1 of the fiscal year immediately
29 preceding the applicable fiscal year, adjust the rate in paragraph
30 (1) in that manner as to generate an amount of revenue that will
31 equal the amount of revenue loss attributable to the exemption
32 provided by Section 6357.7, based on estimates made by the board.

33 (3) ~~(A) In order to maintain revenue neutrality, for the rate~~
34 ~~adjustment on or before March 1, 2012, the adjustment under~~
35 ~~paragraph (2) shall also take into account the extent to which, for~~
36 ~~the 2010–11 fiscal year, the difference between actual amount of~~
37 ~~revenues derived pursuant to this subdivision and Section 7361.1~~
38 ~~and the revenue loss attributable to the exemption provided by~~
39 ~~Section 6357.7 either exceeded or was less than a revenue loss of~~
40 ~~six hundred sixty-five million dollars (\$665,000,000).~~

~~(B)~~

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, *as applicable, Section 7361.1*, the revenue loss attributable to the exemption provided by Section 6357.7 differed from the estimates used in making the adjustment under paragraph (2) resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 ~~do~~ does not produce a net revenue gain in state taxes.

~~SEC. 14.~~

SEC. 6. Section 7361.1 is added to the Revenue and Taxation Code, to read:

7361.1. (a) For the privilege of storing, for the purpose of sale, each supplier, wholesaler, and retailer owning 1,000 or more gallons of tax-paid motor vehicle fuel on July 1, 2010, shall pay a storage tax of ~~twelve and nine-tenths cents (\$0.129)~~ $17\frac{3}{10}$ cents (\$0.173) per gallon of tax-paid motor vehicle fuel in storage according to the volumetric measure thereof.

(b) For purposes of this section:

(1) "Owning" means having title to the motor vehicle fuel.

(2) "Retailer" means any person who sells motor vehicle fuel in this state to a person who subsequently uses the motor vehicle fuel.

(3) "Storing" includes the ownership or possession of tax-paid motor vehicle fuel outside of the bulk transfer/terminal system, including the holding of tax-paid motor vehicle fuel for sale at wholesale or retail locations stored in a container of any kind, including railroad tank cars and trucks or trailer cargo tanks. "Storing" also includes tax-paid motor vehicle fuel purchased from and invoiced by the seller, and tax-paid motor vehicle fuel removed from a terminal or entered into by a supplier, prior to the date specified in subdivision (a) and in transit on that date.

(4) "Wholesaler" means any person who sells motor vehicle fuel in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the motor vehicle fuel.

~~SEC. 15.~~

SEC. 7. Section 7653.1 is added to the Revenue and Taxation Code, to read:

7653.1. On or before August 31, 2010, each person subject to the storage tax imposed under Section 7361.1 shall prepare and file with the board, in a form prescribed by the board, a return showing the total number of gallons of tax-paid motor vehicle fuel owned by the person on July 1, 2010, the amount of the storage tax, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

~~SEC. 16.~~ ~~Section 17276.12 is added to the Revenue and Taxation Code, to read:~~

~~17276.12. (a) For taxable years beginning on or after January 1, 2010, and before January 1, 2011, total deductions under Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code shall not exceed 68 percent of the taxpayer's total income.~~

~~(b) For purposes of this section, "total income" means gross income (within the meaning of Section 17071) without regard to any deductions otherwise allowable in determining adjusted gross income (within the meaning of Section 17072) and without regard to any deduction otherwise allowable under Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code.~~

~~(c) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended by one year.~~

~~SEC. 17.~~ ~~Section 23663 of the Revenue and Taxation Code is amended to read:~~

~~23663. (a) (1) Notwithstanding any other law to the contrary, for each taxable year beginning on or after July 1, 2008, any credit allowed to a taxpayer under this chapter that is an "eligible credit (within the meaning of paragraph (2) of subdivision (b)) may be assigned by that taxpayer to any "eligible assignee" (within the meaning of paragraph (3) of subdivision (b)).~~

1 ~~(2) A credit assigned under paragraph (1) may only be applied~~
2 ~~by the eligible assignee against the “tax” of the eligible assignee~~
3 ~~in a taxable year beginning on or after January 1, 2011.~~

4 ~~(3) Except as specifically provided in this section, following an~~
5 ~~assignment of any eligible credit under this section, the eligible~~
6 ~~assignee shall be treated as if it originally earned the assigned~~
7 ~~credit.~~

8 ~~(b) For purposes of this section, the following definitions shall~~
9 ~~apply:~~

10 ~~(1) “Affiliated corporation” means a corporation that is a~~
11 ~~member of a commonly controlled group as defined in Section~~
12 ~~25105.~~

13 ~~(2) “Eligible credit” shall mean:~~

14 ~~(A) Any credit earned by the taxpayer in a taxable year~~
15 ~~beginning on or after July 1, 2008, or~~

16 ~~(B) Any credit earned in any taxable year beginning before July~~
17 ~~1, 2008, that is eligible to be carried forward to the taxpayer’s first~~
18 ~~taxable year beginning on or after July 1, 2008, under the~~
19 ~~provisions of this part.~~

20 ~~(3) “Eligible assignee” shall mean any affiliated corporation~~
21 ~~that is properly treated as a member of the same combined~~
22 ~~reporting group pursuant to Section 25101 or 25110 as the taxpayer~~
23 ~~assigning the eligible credit as of:~~

24 ~~(A) In the case of credits earned in taxable years beginning~~
25 ~~before July 1, 2008:~~

26 ~~(i) June 30, 2008, and~~

27 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
28 ~~in which the eligible credit is assigned.~~

29 ~~(B) In the case of credits earned in taxable years beginning on~~
30 ~~or after July 1, 2008.~~

31 ~~(i) The last day of the first taxable year in which the credit was~~
32 ~~allowed to the taxpayer, and~~

33 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
34 ~~in which the eligible credit is assigned.~~

35 ~~(c) (1) The election to assign any credit under subdivision (a)~~
36 ~~shall be irrevocable once made, and shall be made by the taxpayer~~
37 ~~allowed that credit on its original return for the taxable year in~~
38 ~~which the assignment is made.~~

39 ~~(2) The taxpayer assigning any credit under this section shall~~
40 ~~reduce the amount of its unused credit by the face amount of any~~

1 credit assigned under this section, and the amount of the assigned
2 credit shall not be available for application against the assigning
3 taxpayer's "tax" in any taxable year, nor shall it thereafter be
4 included in the amount of any credit carryover of the assigning
5 taxpayer.

6 (3) ~~The eligible assignee of any credit under this section may~~
7 ~~apply all or any portion of the assigned credits against the "tax"~~
8 ~~(as defined in Section 23036) of the eligible assignee for the taxable~~
9 ~~year in which the assignment occurs, or any subsequent taxable~~
10 ~~year, subject to any carryover period limitations that apply to the~~
11 ~~assigned credit and also subject to the limitation in paragraph (2)~~
12 ~~of subdivision (a).~~

13 (4) ~~In no case may the eligible assignee sell, otherwise transfer,~~
14 ~~or thereafter assign the assigned credit to any other taxpayer.~~

15 (d) (1) ~~No consideration shall be required to be paid by the~~
16 ~~eligible assignee to the assigning taxpayer for assignment of any~~
17 ~~credit under this section.~~

18 (2) ~~In the event that any consideration is paid by the eligible~~
19 ~~assignee to the assigning taxpayer for the transfer of an eligible~~
20 ~~credit under this section, then:~~

21 (A) ~~No deduction shall be allowed to the eligible assignee under~~
22 ~~this part with respect to any amounts so paid, and~~

23 (B) ~~No amounts so received by the assigning taxpayer shall be~~
24 ~~includable in gross income under this part.~~

25 (e) (1) ~~The Franchise Tax Board shall specify the form and~~
26 ~~manner in which the election required under this section shall be~~
27 ~~made, as well as any necessary information that shall be required~~
28 ~~to be provided by the taxpayer assigning the credit to the eligible~~
29 ~~assignee.~~

30 (2) ~~Any taxpayer who assigns any credit under this section shall~~
31 ~~report any information, in the form and manner specified by the~~
32 ~~Franchise Tax Board, necessary to substantiate any credit assigned~~
33 ~~under this section and verify the assignment and subsequent~~
34 ~~application of any assigned credit.~~

35 (3) ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
36 ~~Division 3 of Title 2 of the Government Code shall not apply to~~
37 ~~any standard, criterion, procedure, determination, rule, notice, or~~
38 ~~guideline established or issued by the Franchise Tax Board~~
39 ~~pursuant to paragraphs (1) and (2).~~

1 ~~(4) The Franchise Tax Board may issue any regulations~~
2 ~~necessary to implement the purposes of this section, including any~~
3 ~~regulations necessary to specify the treatment of any assignment~~
4 ~~that does not comply with the requirements of this section~~
5 ~~(including, for example, where the taxpayer and eligible assignee~~
6 ~~are not properly treated as members of the same combined~~
7 ~~reporting group on any of the dates specified in paragraph (3) of~~
8 ~~subdivision (b):~~

9 ~~(f) (1) The taxpayer and the eligible assignee shall be jointly~~
10 ~~and severally liable for any tax, addition to tax, or penalty that~~
11 ~~results from the disallowance, in whole or in part, of any eligible~~
12 ~~credit assigned under this section.~~

13 ~~(2) Nothing in this section shall limit the authority of the~~
14 ~~Franchise Tax Board to audit either the assigning taxpayer or the~~
15 ~~eligible assignee with respect to any eligible credit assigned under~~
16 ~~this section.~~

17 ~~(g) On or before June 30, 2014, the Franchise Tax Board shall~~
18 ~~report to the Joint Legislative Budget Committee, the Legislative~~
19 ~~Analyst, and the relevant policy committees of both houses on the~~
20 ~~effects of this section. The report shall include, but need not be~~
21 ~~limited to, the following:~~

22 ~~(1) An estimate of use of credits in the 2011 and 2012 taxable~~
23 ~~years by eligible taxpayers.~~

24 ~~(2) An analysis of effect of this section on expanding business~~
25 ~~activity in the state related to these credits.~~

26 ~~(3) An estimate of the resulting tax revenue loss to the state.~~

27 ~~(4) The report shall cover all credits covered in this section, but~~
28 ~~focus on the credits related to research and development, economic~~
29 ~~incentive areas, and low-income housing.~~

30 ~~SEC. 18. Section 24416.12 is added to the Revenue and~~
31 ~~Taxation Code, to read:~~

32 ~~24416.12. (a) For taxable years beginning on or after January~~
33 ~~1, 2010, and before January 1, 2011, total deductions under~~
34 ~~Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6,~~
35 ~~and 24416.7 of this code and Section 172 of the Internal Revenue~~
36 ~~Code shall not exceed 68 percent of the taxpayer's net income,~~
37 ~~determined without regard to any deduction otherwise allowable~~
38 ~~under Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5,~~
39 ~~24416.6, and 24416.7 of this code and Section 172 of the Internal~~
40 ~~Revenue Code.~~

~~(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended by one year.~~

~~SEC. 19.~~

SEC. 8. Section 60050 of the Revenue and Taxation Code is amended to read:

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) *If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), including any reduction or adjustment pursuant to subdivision (b), on and after the date of the reduction, shall be increased by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal what it would have been in the absence of the federal reduction.*

(3) *If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.*

(b) (1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to 13.6 cents (\$0.136) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012–13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate *reduction* in paragraph (1) in that manner as to ~~generate an amount of revenue~~ *result in a revenue loss attributable to paragraph (1)* that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal

1 year ending prior to the rate adjustment date on or before March
2 1.

3 (4) The intent of paragraphs (2) and (3) is to ensure that the act
4 adding this subdivision and Sections 6051.8 and 6201.8 ~~do~~ *does*
5 not produce a net revenue gain in state taxes.

6 ~~SEC. 20.~~ Section 183.1 of the Streets and Highways Code is
7 amended to read:

8 183.1. (a) ~~Notwithstanding subdivision (a) of Section 182 or~~
9 ~~any other provision of law, money deposited into the account that~~
10 ~~is not subject to Article XIX of the California Constitution,~~
11 ~~including, but not limited to, money that is derived from the sale~~
12 ~~of documents, charges for miscellaneous services to the public,~~
13 ~~condemnation deposits fund investments, rental of state property,~~
14 ~~or any other miscellaneous uses of property or money, may be~~
15 ~~used for any transportation purpose authorized by statute, upon~~
16 ~~appropriation by the Legislature or, after transfer to another fund,~~
17 ~~upon appropriation by the Legislature from that fund.~~

18 (b) (1) ~~Not later than November 1 of each year, except as~~
19 ~~otherwise provided in subdivision (c), based on prior year financial~~
20 ~~statements, the Controller shall transfer the funds identified in~~
21 ~~subdivision (a) for the prior fiscal year to the Public Transportation~~
22 ~~Account in the State Transportation Fund.~~

23 (2) ~~From the funds transferred to the Public Transportation~~
24 ~~Account pursuant to this subdivision in the 2009–10 fiscal year,~~
25 ~~the Controller shall retransfer to the State Highway Account the~~
26 ~~sum of seventy-eight million nine hundred three thousand dollars~~
27 ~~(\$78,903,000). Notwithstanding paragraph (1), the Controller shall~~
28 ~~then transfer these funds from the State Highway Account to the~~
29 ~~Transportation Debt Service Fund in the State Transportation Fund.~~

30 (c) ~~Notwithstanding subdivision (b), in the 2010–11 fiscal year,~~
31 ~~and not later than November 1, 2010, based on prior year financial~~
32 ~~statements, the Controller shall transfer the funds identified in~~
33 ~~subdivision (a) for the prior fiscal year to the Transportation Debt~~
34 ~~Service Fund in the State Transportation Fund.~~

35 (d) ~~Notwithstanding Section 99312 of the Public Utilities Code,~~
36 ~~commencing with the 2011–12 fiscal year, the funds transferred~~
37 ~~to the Public Transportation Account pursuant to subdivision (b)~~
38 ~~shall be made available only for the purposes of Section 99315 of~~
39 ~~the Public Utilities Code, subject to appropriation by the~~
40 ~~Legislature, except as provided in paragraphs (1) and (2).~~

1 ~~(1) For the 2011–12 fiscal year, eleven million five hundred~~
2 ~~thousand dollars (\$11,500,000), subject to appropriation by the~~
3 ~~Legislature, shall be allocated pursuant to subdivision (b) of Section~~
4 ~~99312 of the Public Utilities Code, and eleven million five hundred~~
5 ~~thousand dollars (\$11,500,000), subject to appropriation by the~~
6 ~~Legislature, shall be allocated pursuant to subdivision (c) of Section~~
7 ~~99312 of the Public Utilities Code.~~

8 ~~(2) For the 2012–13 fiscal year, six million dollars (\$6,000,000);~~
9 ~~subject to appropriation by the Legislature, shall be allocated~~
10 ~~pursuant to subdivision (b) of Section 99312 of the Public Utilities~~
11 ~~Code, and six million dollars (\$6,000,000), subject to appropriation~~
12 ~~by the Legislature, shall be allocated pursuant to subdivision (c)~~
13 ~~of Section 99312 of the Public Utilities Code.~~

14 ~~SEC. 21. Section 2103 of the Streets and Highways Code is~~
15 ~~amended to read:~~

16 ~~2103. (a) Of the net revenues deposited to the credit of the~~
17 ~~Highway Users Tax Account that are derived from the increases~~
18 ~~in the rates of taxes that are imposed pursuant to subdivision (b)~~
19 ~~of Section 7360 and Section 7361.1 of the Revenue and Taxation~~
20 ~~Code, all of the following shall occur on a monthly basis:~~

21 ~~(1) (A) By the 15th day of every month, the Treasurer's office,~~
22 ~~in consultation with the Department of Finance, shall notify the~~
23 ~~Controller of the amount of debt service that will be paid on each~~
24 ~~transportation bond during that month.~~

25 ~~(B) Within two business days following the 28th day of each~~
26 ~~month, the Controller shall transfer to the Transportation Debt~~
27 ~~Service Fund an amount equal to the amount of monthly debt~~
28 ~~service paid by the General Fund on any bonds issued pursuant to~~
29 ~~the Seismic Retrofit Bond Act of 1996 (Chapter 12.48~~
30 ~~(commencing with Section 8879) of Division 1 of Title 2 of the~~
31 ~~Government Code) or any other highway bonds, and three-quarters~~
32 ~~of the amount of debt service paid on any bonds issued pursuant~~
33 ~~to the Highway Safety, Traffic Reduction, Air Quality, and Port~~
34 ~~Security Bond Act of 2006 (Chapter 12.49 (commencing with~~
35 ~~Section 8879.20) of Division 1 of Title 2) for reimbursement of~~
36 ~~the General Fund for these costs. If revenues available pursuant~~
37 ~~to this subdivision in any given month are insufficient to fully~~
38 ~~reimburse the General Fund for the debt service payments made,~~
39 ~~the first revenues available pursuant to this subdivision in the~~
40 ~~following month or months shall be transferred to the~~

1 Transportation Debt Service Fund so that all debt service payments
2 made on these bonds from the General Fund in a given fiscal year
3 are fully reimbursed.

4 (2) After the monthly transfer made pursuant to paragraph (1),
5 the Controller shall transfer any remaining net revenues subject
6 to this subdivision as follows:

7 (A) Thirty percent shall be transferred to the State Highway
8 Account to fund projects in the State Transportation Improvement
9 Program that are consistent with Section 1 of Article XIX of the
10 California Constitution, except in the 2010–11 fiscal year, 50
11 percent shall be transferred for purposes of this subparagraph.

12 (B) Thirty percent shall be transferred to the State Highway
13 Account to fund projects in the State Highway Operation and
14 Protection Program, except in the 2010–11 fiscal year, no revenues
15 shall be transferred for purposes of this subparagraph.

16 (C) Forty percent shall be apportioned by the Controller for
17 local street and road purposes, except in the 2010–11 fiscal year,
18 50 percent shall be transferred for purposes of this subparagraph
19 as follows:

20 (i) Fifty percent shall be apportioned by the Controller to cities,
21 including a city and county, in the proportion that the total
22 population of the city bears to the total population of all the cities
23 in the state.

24 (ii) Fifty percent shall be apportioned by the Controller to
25 counties, including a city and county, in accordance with the
26 following formulas:

27 (I) Seventy-five percent shall be apportioned among the counties
28 in the proportion that the number of fee-paid and exempt vehicles
29 that are registered in the county bear to the number of fee-paid and
30 exempt vehicles registered in the state.

31 (II) Twenty-five percent shall be apportioned among the counties
32 in the proportion that the number of miles of maintained county
33 roads in each county bear to the total number of miles of
34 maintained county roads in the state. For the purposes of
35 apportioning funds under this subparagraph, any roads within the
36 boundaries of a city and county that are not state highways shall
37 be deemed to be county roads.

38 (b) After the transfers or apportionments pursuant to subdivision
39 (a), at least 90 percent of the balance deposited to the credit of the
40 Highway Users Tax Account in the Transportation Tax Fund by

1 the 28th day of each month shall be apportioned or transferred, as
2 applicable, by the Controller by the second working day thereafter,
3 except for June, in which case the apportionment or transfer shall
4 be made the same day. These apportionments or transfers shall be
5 made as provided for in Sections 2104 to 2122, inclusive. If
6 information is not available to make the apportionment or transfer
7 as required, the apportionment or transfer shall be made on the
8 basis of the information of the previous month. Amounts not
9 apportioned or transferred shall be included in the apportionment
10 or transfer of the subsequent month.

11 SEC. 22. The provisions of this act are severable. If any
12 provision of this act or its application is held invalid, that invalidity
13 shall not affect other provisions or applications that can be given
14 effect without the invalid provision or application.

15 SEC. 23. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 SEC. 24.

25 SEC. 9. This act addresses the fiscal emergency declared by
26 the Governor by proclamation on January 8, 2010, pursuant to
27 subdivision (f) of Section 10 of Article IV of the California
28 Constitution.

29 SEC. 10. *This act provides for a tax levy within the meaning*
30 *of Article IV of the Constitution and shall go into immediate effect.*